IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Pukh Raj Singhi v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.2775/2005
under Article 226 of the Constitution of India.

Date of Order : 2nd September, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. H.K.Purohit, for the petitioner.
Mr. S.N.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

The petitioner, an old man of 86 years, preferred this writ petition claiming interest over the delayed payment of pension and gratuity to him.

The factual matrix as averred in the writ petition is that the petitioner remained in services of State of Rajasthan from 18.8.1941 to 16.11.1962, thereafter his services were absorbed with the services of Jodhpur University, Jodhpur.

By way of filing a writ petition (SBCWP No.3946/94) the petitioner claimed proportionate pension from State of Rajasthan for the period he was in employment of State. The writ petition preferred by the petitioner was accepted by this Court by judgment dated 13.10.2000 by directing the respondents to determine pension of the petitioner by taking into consideration his eligible service between 18.4.1941 to 16.11.1962. Operative portion of the judgment dated 13.10.2000 reads as under:-

> "As a result, the petitioner is held entitled to relief claimed by him. Allowing the writ petition the respondents are directed to determine the pension of the petitioner by taking his eligible service between 18.8.1941 to 16.11.1962, that is to say until before he joined the service of University on 17.11.1962 as per the Rules applicable from time to time. However, looking to the facts and circumstances of the case, the petitioner shall be entitled to the actual release of pension only with effect from the date of filing of the writ petition and he shall not be entitled to arrears prior to the date of filing of the writ petition i.e. 16.8.1994. In the facts and circumstances, there shall be no order as to costs. The effect shall be given to the above directions, within a period of two months."

A Special Appeal preferred by the Government of Rajasthan before Division Bench of this Court giving challenge to the judgment dated 13.10.2000 was rejected by judgment dated 16.12.2003 and a Special Leave Petition preferred thereafter was also dismissed by Hon'ble Supreme Court by an order dated 12.7.2004. In spite of it the compliance of the directions given by this Court by judgment dated 13.10.2000 was not made, therefore, the petitioner lodged a contempt petition before this Court, however, during pendency of contempt petition by an order dated 9.9.2004 the respondents released the due amount required to be paid to the petitioner under the judgment dated 13.10.2000.

The contention of counsel for the petitioner in present writ petition is that the petitioner became entitled for getting pensionary rights from the date of his retirement but the same was not given to him illegally. Ultimately Court allowed the actual payment of arrears from the date of filing SBCWP No.3946/94 i.e. 16.8.1994, as such from that date he is entitled to get interest over the due arrears. It is also stated by counsel for the petitioner that the respondents unnecessarily delayed the payment of arrears for about a period of four years even after the directions given by this Court by judgment dated 13.10.2000.

A reply to the writ petition has been filed on behalf of the respondents stating therein that delay was caused in making payment due to continuous litigation. The amount for which the petitioner was declared entitled by this Court was paid to him after getting the matter finally decided by Hon'ble Supreme Court by order dated 12.7.2004. It is also stated by the respondents that no order with regard to payment of interest was made by this Court, therefore, no relief can be given to the petitioner as prayed by him in present writ petition.

Heard counsel for the parties.

There is no dispute between the parties that the petitioner became entitled to get pensionary benefits for the period he remained in services of State i.e. the period commencing from 18.8.1941 to 16.11.1962 and this Court by judgment dated 13.10.2000 directed the State to make the actual payment of arrears from the date of filing the writ petition (SBCWP No.3946/94) i.e. 16.8.1994. The amount of arrears was required to be paid by the respondents within a period of two months from the date of judgment, meaning thereby the compliance was required to be made on or before 13.12.2000. The respondents delayed the payment of the said amount due to pendency of litigation. May it be a valid reason for not making the payment of arrears to the petitioner within

the period fixed under the judgment dated 13.10.2000 but the resultant position is that a huge movable property of the petitioner was retained by the respondents for a period of more than ten years i.e. from the date the petitioner became entitled for the same i.e. 16.8.1994 to 9.9.2004. Had that amount would have been paid in time the petitioner could have used the same or could have earned interest thereon, which is now a known mode of income for a retired government servant. The respondents kept all this property of the petitioner with them and deprived him from his income. In place of the petitioner the mighty State has earned interest against the said movable property. In event the respondents be permitted to keep the interest earned with them then the same shall be nothing but to deprivation of the own property to the petitioner by the respondents without having authority of law and the same shall be in violation of provisions of Article 300-A of the Constitution of India. In view of it the petitioner is entitled for getting the interest earned over the arrears paid to him on 9.9.2004 determining the same from 16.8.1994, the date from which this Court directed the respondents to determine the arrears of pension and to pay the same to him.

Accordingly this petition for writ is allowed and the respondents are directed to make payment of interest to the petitioner @ 10% per annum against the

arrears accrued and paid to him against the pension and gratuity on 9.9.2004.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.